# STATE OF MICHIGAN

# COURT OF APPEALS

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POLKTON CHARTER TOWNSHIP,

Plaintiff-Appellant,

v

WILLIAM HENKE and LYDA HENKE,

Defendants-Appellees.

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UNPUBLISHED
August 14, 2003

No. 238890
Ottawa Circuit Court
LC No. 00-36746-CZ

Before: Whitbeck, C.J., and Smolenski and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment in favor of defendants following a bench trial. We affirm.

Plaintiff argues that defendant is not entitled to relief pursuant to the equitable doctrine of laches because defendants purposely violated a municipal zoning ordinance and that defendants, therefore, should have been denied relief pursuant to the equitable doctrine of "clean hands." We disagree.

This Court reviews a trial court's equitable decisions de novo, and the supporting findings of fact for clear error. *Webb v Smith (After Second Remand)*, 224 Mich App 203, 210; 568 NW2d 378 (1997). In a de novo review, this Court will uphold the decision of the trial court unless this Court would have reached a different result had it been sitting as the trial court. *City of Holland v Manish Enterprises*, 174 Mich App 509, 511; 436 NW2d 398 (1988).

As a preliminary matter, we note that plaintiff has failed to support its arguments with sufficient evidence to address this issue. Plaintiff has merely presented this Court with its own general conclusions of law. "Insufficiently briefed issues are deemed abandoned on appeal." *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 471; 628 NW2d 577 (2001).

Regardless, we find no merit to plaintiff's claims. "The application of the doctrine of laches requires the passage of time combined with a change in condition that would make it inequitable to enforce the claim against defendants." *City of Troy v Papadelis (On Remand)*, 226 Mich App 90, 96-97; 572 NW2d 246 (1997). In determining whether the doctrine of laches applies, each case must be decided based on its own particular facts. *Id*. at 97. A defendant raising the doctrine of laches must prove a lack of due diligence on the part of the plaintiff, which results in prejudice to the defendant. *University of Michigan Regents v State Farm Mut*

*Ins Co*, 250 Mich App 719, 734; 650 NW2d 129 (2002). In demonstrating that a defendant suffered prejudice, "[i]t is the effect, rather than the fact, of the passage of time that may trigger the defense of laches." *Troy*, *supra* at 97.

In order to assert the equitable defense of laches defendants must have clean hands. *Attorney General v Thomas Solvent Co*, 146 Mich App 55, 66; 380 NW2d 53 (1985). The equitable doctrine of clean hands is based upon the principle that one who seeks equity, must do equity. *Id*. "A person seeking equity should be barred from receiving equitable relief if there is any indication of overreaching or unfairness on this person's part." *Royce v Duthler*, 209 Mich App 682, 689; 531 NW2d 817 (1995) (citations omitted). "The unfair or overreaching conduct need not be actionable in any way. It need only be a willful act that transgresses the equitable standards of conduct." *Royce*, *supra* at 689. In determining whether to apply the clean hands maxim, this Court is "not bound by formula or restrained by any limitation that tends to trammel the free just exercise of discretion." *Stachnik v Winkel*, 394 Mich 375, 387; 230 NW2d 529 (1975) (citation omitted).

Plaintiff concedes that "[t]he main structure erected in 1989 is too far remote to contest because action was not taken." Importantly, plaintiff does not claim that the trial court's findings of fact were clearly erroneous. Instead, plaintiff contends that the trial court's judgment should be reversed with respect to any additions or expansions of the dairy farm that have occurred since 1995. Plaintiff apparently relies on its claim that there was an attempt to enforce its zoning ordinance regarding the extension or expansion related to the non-conforming use[1] in 1995 when Arthur Lucas, defendants' neighbor and the township assessor and supervisor, allegedly informed defendants' son that permits should be obtained. Plaintiff further contends that judgment for defendants was improper because defendants do not have clean hands, whereas defendants continued to build barns and expand their operations despite defendants' son having filed an application for a permit on June 27, 1995, which was denied.

Plaintiff's argument ignores several important principles established at trial. First, it is evident that plaintiff undertook no official action in preventing any of defendants' expansions from the time defendants erected the pole barn in 1989 until the time the complaint was filed in 2000. Additionally, Gordon Baldus, an electrical contractor and the building inspector for Polkton Township from 1980 through 1992, performed electrical work for defendants, and was the person responsible for issuing building permits during his tenure as the township building inspector. Baldus indicated that he would not have performed any work for defendants if a permit had been required and no permit had been issued. Baldus further testified that he informed the township regarding the potential conflict of interest that existed between the work he was performing for defendants and his role as the building inspector, but that the township indicated that it would "just have to get by with it." Further, two members of the township's board made regular visits[2] to defendants' farm without mentioning the requirement for a permit

[1] At the time defendants purchased the property in 1987, the property had been zoned for residential use; however, plaintiff conceded in its complaint that the use of the property as a dairy farm was a valid nonconforming use, predating the enactment of the zoning ordinance.

[2] Dr. Sheridan, defendants' veterinarian, was a long-term township board member. Dr. Sheridan was well aware of defendants' improvements and the increase in the herd size. Merle Hecksel, a well-driller and long-time board member, drilled and maintained defendants' wells and went to
(continued…)

or possible violations of the zoning ordinance. None of these township officials mentioned any problem with the expansion of defendants' farm, and as already indicated, the building inspector actually participated in it.

Lucas measured each improvement to the farm and added it to the tax rolls. Lucas said nothing regarding any violations of the zoning ordinance until 1995, when he allegedly mentioned that defendants required permits to build the additions to the farm buildings. This is the lone mention of a violation by any official of a possible violation. There was no official action taken whatsoever before or after this comment was made until the filing of the complaint.

Further, the record demonstrates that by 1995, the number of dairy cattle on the farm had reached its present figure and most of the structures were already in place. Therefore, even if the clean hands doctrine applied to the post-1995 expansion, there would be little, if any, reduction required by defendants. Additionally, there was testimony that defendants were informed by a township official that any expansion to an existing structure that was less than a "fifty percent expansion" of the size of that structure was consistent with the zoning ordinance and did not require a permit. The record indicates that any expansion done in 1995, or thereafter, was an addition to an existing structure and less than a fifty percent expansion of that structure. Therefore, without determining whether defendants had an accurate understanding of the township zoning ordinance, it is clear that defendants did not act in defiance of the ordinance, but in accordance with their understanding of the ordinance as it was explained to them by a township official. Thus, the trial court did not err in determining that laches applied and that the doctrine of unclean hands was inapplicable.

Affirmed.

/s/ William C. Whitbeck
/s/ Michael R. Smolenski
/s/ Christopher M. Murray

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the farm a couple of times a year.